

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-1907

IN RE: FREDERICK H. BANKS

On a petition for Writ of Mandamus

Submitted Pursuant to Rule 21, Fed. R. App. P.
April 29, 2010

Before: SLOVITER, AMBRO and SMITH, Circuit Judges

(Opinion filed: May 11, 2010)

OPINION

PER CURIAM

Frederick H. Banks is a federal prisoner currently incarcerated at the Federal Correctional Institution in Yazoo City, Mississippi (FCI-Yazoo City). On March 29, 2010, Banks, proceeding pro se, commenced an original proceeding in this Court by filing a “Petition for Writ of Mandamus and Prohibition” pursuant to 28 U.S.C. § 1364. In his petition, Banks alleges that officers at FCI-Yazoo City are unlawfully holding him in the Special Housing Unit in order to prevent him from accessing his materials relating to a pending appeal. Banks claims that the defendants’ conduct violates his “Fifth and Sixth Amendment right to prosecute his appeal,” and asks the Court to “immediately discharge

[him] from unlawful confinement, provide his legal papers, and enjoin [the defendants] from this conduct.” (Pet. 1.)

We will deny the petition. The remedy of mandamus is reserved for the most “extraordinary situations.” DeMasi v. Weiss, 669 F.2d 114, 117 (3d Cir. 1982). In order to ensure that mandamus is sparingly granted, a petitioner seeking a writ of mandamus must demonstrate that no other adequate means are available to obtain the desired relief and that the right to issuance of the writ is “clear and indisputable.” Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980) (citations omitted); Media Gen. Operations v. Buchanan, 417 F.3d 424, 434 (4th Cir. 2005). Because Banks has civil remedies available, including an action pursuant to Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), which should be brought in the district court in the first instance, Banks has not established that mandamus relief is warranted.

Accordingly, we will deny the petition for a writ of mandamus.